

Office of the Independent Police Auditor

Monthly Report

July 2013



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

August 12, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period July 1, 2013 through July 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47 [*]	1	1	0
May 2013	7	42 [*]	0	2	0
June 2013	8	38 [*]	0	0	0
July 2013	15 [†]	44	1	1	0

^{*}Due to a previously unidentified reporting error in April 2013, two closed cases were not reported on during that month. The two cases are therefore reported on in this report, and the number of open cases decreased by two where indicated in this chart.

[†]This number includes two cases that were initiated in prior reporting periods, but were not previously reported on. They are therefore included in this report.

Types of Cases Filed

Citizen Complaints	12
Administrative Investigations	3
Comments of Non-Complaint	0
TOTAL	15

Citizen Complaints Received per Department

OIPA	3
BART Police Department	9
TOTAL	12

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed**

During the month of July 2013, 3 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (OIPA 13-41) (IA2013-055)	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none">• Neglect of Duty	OIPA referred the complaint to BART PD and will monitor their investigation.	27
2 (OIPA 13-45) (IA2013-059)	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none">• Neglect of Duty	OIPA referred the complaint to BART PD and will monitor their investigation.	14
3 (OIPA 13-46) (IA2013-063)	<u>Civilian #1</u> <ul style="list-style-type: none">• Conduct Unbecoming an Officer	OIPA referred the complaint to BART PD and will monitor their investigation.	14

During the month of July 2013, 8 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-052)	<u>Officer #1</u> <ul style="list-style-type: none">• Conduct Unbecoming an Officer• Courtesy <u>Officer #2</u> <ul style="list-style-type: none">• Conduct Unbecoming an Officer	BART PD initiated an investigation.	38
2 (IA2013-053)	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none">• Policy Complaint	BART PD initiated an investigation.	32
3 (IA2013-054)	<u>Officer #1</u> <ul style="list-style-type: none">• Bias-Based Policing• Arrest or Detention	BART PD initiated an investigation.	27
4 (IA2013-056)	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none">• Policy/Procedure	BART PD initiated an investigation.	31
5 (IA2013-057)	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none">• Performance of Duty	BART PD initiated an investigation.	26

6 (IA2013-058)	<u>Officer #1</u> • Conduct Unbecoming an Officer <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	21
7 (IA2013-062)	<u>Officer #1</u> • Arrest or Detention	BART PD initiated an investigation.	14
8 (IA2013-068)	<u>Officer #1</u> • Performance of Duty	Bart PD initiated an investigation.	38

During the month of July 2013, 2 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-061)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	21
2 (IA2013-064)	<u>Unidentified Officer(s)</u> • Force	BART PD initiated an investigation.	12

Complaints/Investigations Initiated During Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of June 2013, 1 previously unreported Citizen Complaint was received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-060)	<u>Unidentified Officer(s)</u> • Policy/Procedure	BART PD initiated an investigation.	48

During the month of March 2013, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-035*)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	146

*The incident underlying this case gave rise to a separate misconduct investigation involving the use of force by an officer (see IA2013-048 in the June 2013 report). When it was discovered that a potential procedural issue had arisen involving the same incident (separate from the use of force), the BART Police Department initiated this additional investigation. The underlying incident occurred on March 19, 2013.

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of July 2013, 7 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-115)	Officer pointed a gun at complainant and a friend, and was unprofessional for not allowing complainant to explain the situation.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Force – Exonerated • Bias Based Policing – Not Sustained • Search or Seizure - Exonerated	235	207
2 (IA2012-119)	Officer struck complainant's foot with a flashlight while he was asleep and threw him to the ground. Officer did not detain complainant to evaluate his ability to care for himself and did not complete a field information card.	<u>Officer #1</u> • Force – Not Sustained • Policy/Procedure – Sustained • Performance of Duty – Sustained	233	214

3 (IA2013-011)	Officer discriminated against complainant based on his race and treated complainant discourteously during a contact regarding fare evasion.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	172	153
4 (IA2013-021)	Officers unjustifiably arrested complainant for public intoxication, used excessive force against him, and failed to conduct a blood test to measure his intoxication.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated • Policy/Procedure – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated • Policy/Procedure – Unfounded 	151	119
5 (IA2013-032)	Complainant was unjustifiably arrested for public intoxication.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated 	117	104
6 (IA2013-039)	Complainant observed officer fail to intervene in a fight between civilians.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisory Referral¹⁰ 	83	48
7 (IA2013-060)	Complainant reported unsafe conditions at the Daly City BART Station and the surrounding area.	Service Review ¹¹	48	28

During the month of July 2013, 2 Administrative Investigations were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-109)	Officers kicked and pushed complainant, mistreated him due to his ethnicity, and were disrespectful toward him.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Force – Exonerated • Bias Based Policing – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Force – Exonerated • Bias Based Policing – Unfounded <u>Officer #3</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Force – Exonerated • Bias Based Policing – Unfounded 	289	258
2 (IA2013-061)	BART Police vehicle was filmed by city traffic cameras failing to stop for a red light.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure – Supervisory Referral 	21	7

Complaints/Investigations Concluded During a Prior Reporting Period

Dispositions/# of Days Elapsed

During the month of April 2013, 2 Citizen Complaints were concluded by the BART Police Department, but were not previously reported on:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-074)	Officers did not enforce BART District rules and/or laws relating to food and bicycles on board BART trains.	<u>Unknown Officer(s)</u> <ul style="list-style-type: none">• Performance of Duty – Unfounded	374	249
2 (IA2012-085)	Officer failed to take a report and was rude when complainant advised him of a person armed with a weapon on a train.	<u>Officer #1</u> <ul style="list-style-type: none">• Performance of Duty – Unfounded• Conduct Unbecoming an Officer – Not Sustained	304	195

Additional Notes

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	3
Investigations Being Monitored	10
Investigations Reviewed During Current Month	23*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

Pursuant to a review conducted by OIPA, the BART Police Department re-opened Case #IA2012-120 for follow-up work during the current reporting period. The complainant in that case had

raised a concern about the length of an extended train delay due to police activity. The case was reclassified from a Comment of Non-Complaint to a Citizen Complaint, and Internal Affairs personnel contacted the complainant to verify that her concern was sufficiently addressed. The follow-up work is complete, and the disposition of the case remains "Service Review."

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as "Comments of Non-Complaint;" these are comments "on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint." (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to

cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

¹¹ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.